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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION, AND INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Torture and other Abuses in the Mexican Criminal Justice System

1. The Lawyers Committee for Human Rights continues to be concerned about the use of torture in criminal investigations and prosecutions in various parts of the world. The criminal justice system in Mexico illustrates the unfortunate link between insufficient procedural protections and serious violations of human rights.

2. Most experts agree that there has been some improvement in the situation of criminal defendants in Mexico in recent years. Nonetheless, persons detained and/or prosecuted within the Mexican justice system continue to suffer from physical mistreatment and other abuses, such as demands for bribes, at the hands of the authorities. In some cases, this mistreatment includes torture.

3. We welcome the recent investigations regarding the incidence of torture in Mexico by United Nations, OAS and Mexican bodies. All of these organizations have concluded that torture remains a serious problem in Mexico [see the reports of the Special Rapporteur on the question of torture (E/CN.4/1998/38/Add.2, 14 January 1998), the UN Human Rights Committee (CCPR/C/79/Add.109), the Inter-American Commission on Human Rights (Report on the Situation of Human Rights in Mexico, 1998) and the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*) (Annual Report of Activities May 1997-1998, Summary 8, June 5, 1998)].

Weaknesses in the Mexican Criminal Process that Lead to Human Rights Violations

4. Certain aspects of the laws and practices governing the criminal process in Mexico encourage abuse. Many of these laws and practices are touted as measures to combat criminal impunity and to permit the swift and sure application of justice. However, these measures have fostered reliance on investigative tactics which include torture. In addition to violations of international human rights standards, such techniques may lead to wrongful convictions and inefficient law enforcement.

5. The following aspects of the Mexican criminal system illustrate the current abuses taking place in Mexico, and highlight those elements of any criminal process that are most susceptible to abuse. Many of the existing problems in Mexico have been identified by UN and OAS bodies and recommendations for reform have been made. It remains for Mexico to take effective steps to implement those recommendations.

6. *Arbitrary detentions* are prevalent in Mexico, and there exists an important relation between arbitrary detentions and other abuses against detainees. The best guarantee against arbitrary detentions is the requirement that all detentions be carried out pursuant to a judicial order. However, Mexican laws now provide for exceptions to the general constitutional rule requiring a judicial warrant in cases of *in flagrante delicto* and "urgent" matters. These exceptions have been increasingly broadened in recent years through successive legislative reforms. In its 66th session, the UN

Human Rights Committee noted, in its concluding observations, that "the extension of the concept of 'flagrancy' implies a serious threat to the security of persons". The Committee also highlighted the potential for abuses when the Office of the Attorney General exercises its authority to hold persons arrested under these exceptions for a period of 48-96 hours before presenting them to a judge.

7. *Failure to provide prompt access to legal counsel.* The criminal defendant's constitutional right to a defense attorney during the prior investigation stage (*averiguación previa*) of a criminal proceeding has been so narrowly interpreted that a detained defendant is denied the right to access counsel until he makes his formal declaration to the Public Ministry. Since the Public Ministry is entitled to detain a suspect for 48-96 hours, the authorities are provided with a lengthy opportunity to interrogate the defendant, in the absence of a lawyer, prior to taking the declaration. This clearly increases the chance that the defendant's formal declaration will be the result of coercion. The UN Human Rights Committee "deplore[d]" these limitations on the right of a suspect to have early access to an attorney.

8. *Unsafe circumstances for the taking of confessions.* The Mexican Constitution provides that a confession must be made before the Public Ministry or a judge in order to constitute evidence in legal proceedings. This rule was adopted in order to prevent the Judicial Police from obtaining confessions because Police agents often committed abuses when they interrogated criminal suspects. Although this reform is a welcome advance, the rule does not deal with the problem that agents of the Public Ministry share an identity of goals with the Judicial Police. Accordingly, many of the problems which characterized the process when the Judicial Police had the authority to obtain confessions (including torture and unreliable confessions) continue to exist when confessions are taken by the Public Ministry. For this reason, both the UN Special Rapporteur on Torture and the Inter-American Commission on Human Rights have specifically recommended that the laws be amended so that only judges are permitted to take confessions.

9. *Improper judicial consideration of allegedly coerced confessions.* The criminal procedure code lacks provisions to guide judicial evaluation of allegations that confessions may be tainted by coercion. In the absence of guidance, judges have placed an improper burden on the defendant to establish both the alleged mistreatment or torture and the causal link between this mistreatment and the confession. In addition, the criminal procedure codes in Mexico fail to clearly establish that a confession obtained through torture or other coercion must absolutely be excluded from the criminal hearing. In accordance with the principle that all defendants should enjoy the presumption of innocence, it is inappropriate for the burden of proof to lay on the defendant to establish coercion, nor is it appropriate for a confession obtained by coercion to constitute evidence in a trial. The UN Human Rights Committee and the Special Rapporteur on Torture have expressed their concern about such practices.

10. *Lack of judicial supervision and the non-public nature of proceedings.* Judges do not attend most proceedings in the cases for which they are responsible. The secretary of the court attends those proceedings and works with the stenographer to record them while the judge remains in his or her office subject to call in the case of a serious dispute. The judge then makes his or her decision based on the written record. Furthermore, the hearings are not truly public in nature. The general public is placed at a physical distance from the proceeding which prevents them from following events. The Human Rights Committee noted, in this regard, that the criminal procedure applied in Mexico "constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge...and at a public hearing."

Recommendations

11. The Lawyers Committee for Human Rights calls on the Commission on Human Rights to urge the Mexican Government to fully implement the recommendations of the United Nations Human Rights Committee, the United Nations Special Rapporteur on the question of torture and the Inter-American Commission on Human Rights with respect to the criminal process.

12. The Lawyers Committee for Human Rights also calls on the Commission on Human Rights to ensure that the Technical Assistance Programme between the United Nations Office of the High Commissioner for Human Rights and the Mexican Government grants priority attention to the criminal justice system in Mexico and otherwise addresses the root causes of the human rights problems in Mexico. For this purpose, the Lawyers Committee hopes that the Commission on Human Rights will urge the Mexican Government to accept a visit from the High Commissioner's Needs Evaluation Mission as soon as possible and allow that Mission wide latitude in analyzing human rights issues, including those relating to criminal justice.